



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF G-M-V-M-

DATE: DEC. 28, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a sixth grade math teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and asserts that her proposed endeavor in math and special education is in the national interest, and that a waiver of the job offer requirement should be granted.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.¹ *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.²

II. ANALYSIS

The Director acknowledged evidence of the Petitioner's Bachelor of Science degree in computer science from [REDACTED] as well as evidence of her five years of experience as a teacher, and concluded that she qualifies as a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(3)(i)(B). Upon review, while the record includes evidence of her experience as a public school teacher, as well as her Texas Educator Certificate and transcripts for her graduate program in special education, it does not include a diploma or official transcripts as evidence of her baccalaureate degree. Therefore, we disagree with the Director and find that the Petitioner has not provided sufficient documentation of her eligibility for the underlying EB2 visa classification.³ Nevertheless, we will continue with our analysis of whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a sixth grade math teacher, and proposed to continue in this endeavor while also pursuing a master's degree in special education. She states that she plans to complete her degree so that she can employ best practices in her classroom and develop innovative teaching strategies using technology to meet the needs of special education students. For the reasons discussed below, we find the Petitioner has not established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

In his decision, the Director found that the Petitioner's proposed endeavor has substantial merit. The Petitioner referenced media and federal government reports noting the shortage of teachers in the United States, especially in the areas of science, technology, engineering, and mathematics (STEM), and the criticality of these subjects to our national interests. For instance, an article from *The Washington Post* described a study from an education think tank in which it was noted this shortage particularly affected the areas of special education, math and science, the precise areas in which the Petitioner proposes to continue teaching. Upon review, we agree with the Director's finding.

² *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

³ This evidence must be submitted with any further proceedings in this matter.

However, the Petitioner has not submitted sufficient evidence to demonstrate that her proposed endeavor is of national importance. The Director found that her work as a sixth grade math teacher did not offer benefits beyond her local school district, and so could not be considered to have a broader implications consistent with a finding of national importance. He further noted that the evidence submitted by the Petitioner in response to his request for evidence (RFE), including her [REDACTED] grant from the [REDACTED], copyright registration for her sixth grade [REDACTED] book, and graduate program transcript from [REDACTED] could not be considered as they did not exist when her petition was filed on January 14, 2016, and thus could not support her eligibility at that time. On appeal, the Petitioner urges that we consider this evidence, and notes in particular that the effective date of her copyright registration is prior to her receipt of the Director's RFE. Upon review we do not find that the record, even considering this post-filing evidence, establishes that the potential prospective impact of her endeavor would have broader implications within the field of primary STEM and special needs education.

In her response to the Director's RFE, the Petitioner asserted that these post-filing documents demonstrate how her work is of national importance. She indicated that her [REDACTED] book "will be shared via [REDACTED] website as soon as the copyright certificate comes out," but did not provide evidence about this website or how sharing her book on it stands to have an impact on the field of STEM and special needs education on a wider level. She also referenced a seminar she gave to teachers at a high school in her district regarding the importance of [REDACTED] in general, and indicated that she would continue to present seminars and workshops on the subject. But while the impact of this work goes beyond her own classroom, the Petitioner has not demonstrated that it offers implications for the fields of STEM or special education at a level consistent with national importance. Similarly, it has not been shown that the scale of her grant project, which proposed the purchase of 19 tablets loaded with specific software for use by special education students in her school, would have a broader impact on the field of special education. Further, the Petitioner's mentorship of [REDACTED] teacher interns has a direct influence on only those interns. While the Petitioner argues that those interns may go on to teach anywhere, thus extending her influence, the record does not demonstrate that the potential prospective impact of her mentorship rises to a level of having national importance. Accordingly, we agree with the Director and find that, much like the proposed teaching activities of the petitioner in *Dhanasar*, the Petitioner's proposed endeavor does not meet the requirements of the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus of our analysis from the proposed endeavor to the Petitioner. She submitted academic records relating to the graduate program in special education that she is pursuing, letters from colleagues and supervisors confirming her employment history as a teacher, and evidence of awards she received, including "Teacher of the Year" in her school district for the 2015-16 academic year. The letters also praise the Petitioner for her abilities as a sixth grade math teacher, noting the positive impact she has had on standardized test scores at her school and as the sixth grade math curriculum developer for her district. This evidence demonstrates her

qualifications and skill as an experienced teacher, and that she is well-positioned to continue in that endeavor.⁴ The Petitioner thus meets the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong of the *Dhanasar* framework requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. The Petitioner claims that she is eligible for a waiver based upon her education, experience as a teacher, and dedication to teaching math, especially to students with special needs. Despite her documented track record of success in teaching students in her classroom, and the evidence of a national shortage of STEM and special education teachers⁵, the Petitioner has not demonstrated that her work has impacted the field of math and special needs education on a broader level which would justify a national interest waiver. Also, in her response to the Director's RFE, the Petitioner mentioned the potential economic benefits of her work, especially in what she states is an economically depressed area, but she did not articulate or provide evidence to support the economic benefit which would be derived from her work.

Further, the Petitioner states that due to the age of her son and the time needed for completion of the labor certification process, it would be impractical for her to pursue that route as a means for obtaining permanent residency. Although the *Dhanasar* decision indicated that a relevant factor under the third prong could include the impracticality of obtaining a labor certification in light of the nature of a petitioner's qualifications or proposed endeavor, here the Petitioner has not asserted that her qualifications or her endeavor as a public school teacher present obstacles to the labor certification process.

For the reasons discussed above, we find that the Petitioner has not established that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

III. CONCLUSION

The Petitioner has not submitted evidence of her baccalaureate degree, and has therefore not established her eligibility for the underlying EB2 immigrant visa classification. In addition, she has not met the requisite three prongs set forth in the *Dhanasar* analytical framework. We therefore find

⁴ To the extent that the Petitioner plans to disseminate her work on a wider scale by making her [REDACTED] book available to other teachers, the evidence does not establish that she has a past record of achievement that demonstrates that she is well positioned to advance the adoption of [REDACTED] as a teaching tool. The record does not include evidence showing that the Petitioner has made her [REDACTED] book available to other sixth grade math teachers, or that its use has spread beyond her own classroom or school.

⁵ We note that the U.S. Department of Labor addresses shortages of qualified workers through the labor certification process. Accordingly, a shortage alone does not demonstrate that waiving the requirement of a labor certification would benefit the United States.

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that she has not established that she is eligible for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of G-M-V-M-*, ID# 1833319 (AAO Dec. 28, 2018)